

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Nov 27, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ARNULFO FAUSTINO-ANAYA,

Petitioner,

v.

MELISSA ANDREWJESKI,

Respondent.

NO: 4:23-CV-5157-TOR

ORDER DISMISSING PETITION  
WITHOUT PREJUDICE, ETC.

Petitioner, a *pro se* prisoner at the Coyote Ridge Corrections Center, seeks a Writ of Habeas Corpus, *in forma pauperis* status, and a Stay and Abeyance order, along with other relief. ECF Nos. 1 through 7.

Rule 4 of the Rules Governing Section 2254 Cases provides for the summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” Here, it is abundantly clear that Petitioner is not entitled to federal habeas relief at this time.

**WRIT OF HABEAS CORPUS**

Petitioner challenges his convictions for two counts of Rape of a Child in the

1 Second Degree. Petitioner admits that he has not exhausted his state court remedies  
2 and therefore asks for an order of stay and abeyance.

3 According to 28 U.S.C. § 2254(b)(1)(A) “An application for a writ of habeas  
4 corpus on behalf of a person in custody pursuant to the judgment of a State court  
5 shall not be granted unless it appears that—[ ] the applicant has exhausted the  
6 remedies available in the courts of the State”. *See also Rose v. Lundy*, 455 U.S. 509  
7 (1982) and *Rhines v. Weber*, 544 U.S. 269 (2005). Here, Petitioner has not exhausted  
8 his state court remedies and there is no justifiable reason to stay this case and hold  
9 it in abeyance.

10 Petitioner cites to *Rhines v. Weber* for the proposition that the Court should  
11 stay this case and hold it in abeyance. Petitioner misreads *Rhines*. *Rhines* was a  
12 case in which some claims were exhausted and some were not, it was a “mixed  
13 petition”. The Supreme Court held that a district court can stay mixed petitions until  
14 all claims are exhausted in state court. That is not the status of this case.

15 **ACCORDINGLY, IT IS HEREBY ORDERED:**

16 1. The Petition for Writ of Habeas Corpus, ECF No. 1, is **DISMISSED**  
17 **without prejudice.**

18 2. Petitioner’s Application to Proceed *In Forma Pauperis*, ECF No. 2, is  
19 **DENIED as moot.**

3. Petitioner's Motion: Clerk Action Note Up, ECF No. 3, is **DENIED as moot.**

4. Petitioner's Motion: Designation of Records, ECF No. 4, is **DENIED.**

5. Petitioner's Motion: Evidence Hearing Show of Cause, ECF No. 5 is **DENIED as moot.**

6. Petitioner's Motion: Show Cause, ECF No. 6, is **DENIED as moot.**

7. Petitioner's Motion: Stay and Abeyance, ECF No. 7, is **DENIED as moot.**

8. The Court further certifies that there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

The Clerk of Court shall enter this Order, enter judgment, provide copies to Petitioner, and **CLOSE** the file.

DATED November 27, 2023.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge